

## **EXHIBIT 2**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 DR. SARI EDELMAN,

4 Plaintiff,

5 v. 21 Civ. 502 (LJL)

6 NYU LANGONE HEALTH SYSTEM, et  
7 *al.*,

8 Defendants.

9 Trial

10 -----x  
11 New York, N.Y.  
12 July 19, 2023  
13 8:55 a.m.

14 Before:

15 HON. LEWIS J. LIMAN,

16 District Judge  
17 -and a Jury-

## 18 APPEARANCES

19 MILMAN LABUDA LAW GROUP PLLC

20 Attorneys for Plaintiff

21 BY: JOSEPH M. LABUDA

22 EMANUEL S. KATAEV

23 TARTER KRINSKY &amp; DROGIN LLP

24 Attorneys for Defendants

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Summation - Mr. Labuda.

only physician who thinks outside the box to properly diagnose my medical condition."

So I just ask you to look at those, just for sake of time. But one thing that is important here is that, you know, Dr. Edelman took the time with patients to figure out what's going on. Some of these, you heard testimony these rheumatology patients, they can be lifetime patients with them. So if she takes a little longer with them, that's a good thing, not a bad thing. But I think NYU is kind of saying: You should speed through this; hit your RVUs and go on.

If she takes the time, she's not supposed to be penalized for that. She's trying to take care of patients.

Let's jump to the equal pay.

All right. So, with the equal pay, the Equal Pay Act, created in 1963 -- that's when it was enacted, 1963. Happy anniversary, 60 years later. Right? And the reason why it was enacted is because of the perceived pay disparity between men and women, they thought that men thought that they should be paid more for the same job, and the law says that's not OK. That's why the law was enacted in the first place.

So let's see how the EPA and its enforcement is doing now.

(Video played)

"VOICE: All right. We are here at the Oscar's.

"VOICE: That's right, where movie lovers unite and

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Summation - Mr. Labuda.

1 watch TV.

2 "VOICE: This year the academy hired three women to  
3 host because it's cheaper than hiring one man."

4 MR. LABUDA: So, equal pay is still an issue. OK?  
5 It's still an issue. It's an issue throughout the United  
6 States. It's an issue in New York, and it's an issue in Lake  
7 Success, New York, where NYU was. OK? There's no dispute.

8 Again, take your own experiences in terms of equal pay  
9 and what you've heard about that in terms of men being paid  
10 more than women. You take those experiences into the jury room  
11 in determining why and how this happened. But it exists. It  
12 exists, and I think everybody is aware of that. And there's no  
13 dispute that Dr. Edelman was paid less. I mean the evidence is  
14 overwhelming with that fact. Again, NYU disputes somehow that  
15 there wasn't, she wasn't paid less, but I'll let them make  
16 their own arguments.

17 So let's get into the legal elements, again, that  
18 you're going to hear from the Court, but it's pretty simple.

19 With respect to the law, for the plaintiff to prevail  
20 in the case, it has to be equal work and unequal pay. So  
21 that's what the law is, and so equal work, talks about skill,  
22 effort and responsibility; talks about similar working  
23 conditions. Again, there's no dispute from NYU. You heard  
24 that. And then unequal pay, there's no dispute about the pay.  
25 She was paid less.

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Summation - Mr. Labuda.

1           The other thing that's important is that it's a strict  
2 liability law. It means that there's no intent required. And  
3 so that's significant as well.

4           I want to jump into the skill, effort and  
5 responsibility. Those are the three elements of the equal pay  
6 claim in terms of the plaintiff's responsibilities.

7           Skill, they're all rheumatologists. They all went to  
8 medical school. They all have the same skill. You heard them  
9 saying that.

10          Effort. That's effort and responsibility. You know,  
11 we've seen those words before. You know, they're actually in  
12 the contract.

13          Emanuel, if you can go to exhibit 8.

14          They talk about, with that chart, if you remember that  
15 chart, it had the word "effort" in it. NYU uses that word,  
16 "effort." It says effort in there. And that has to do with  
17 the clinical compensation. You remember it says effort, then  
18 it says clinical and then for Dr. Edelman it's 100 percent.  
19 They have that same chart for every doctor. They're  
20 acknowledging that effort is the same. In fact, the testimony,  
21 there you go -- effort. There it is: NYU -- effort. So it's  
22 the same effort that's involved here.

23          What they're trying to say is if you're a faster  
24 doctor and you do more, you see more patients, that's different  
25 than Dr. Edelman. That's just not true at all. Effort has to

N7iWede6                    Summation - Mr. Labuda.

1 do with the patient care. If you're a good doctor and you  
2 spend time with your patient and you spend it full time, that's  
3 the same effort as somebody who's going through, boom, boom,  
4 boom. That is effort. NYU defines it as effort. It's in  
5 their contract. It's in all their contracts, and it's very  
6 important, because they're trying to say she somehow didn't do  
7 the same effort when she was working full time.

8                              Responsibility, we've seen that word too. OK? Where  
9 does responsibility show up?

10                          Jump again, Emanuel, to D852.

11                          OK. So 52 -- go up. Go up. Go up.

12                          Clinical responsibilities. Responsibilities, they're  
13 all the same for the doctors.

14                          And if you roll down to see, Emanuel, in the  
15 responsibilities, it says you will provide clinical patient  
16 care in the specialty of rheumatology on a full-time basis.  
17 That's the responsibility. Guess what? That shows up on  
18 everybody's contract. That's what their responsibility was.  
19 There's no dispute about that. OK?

20                          So when you have NYU saying same effort or more by Dr.  
21 Edelman, same responsibilities, same skill -- they're all  
22 rheumatologists -- she's met her burden. OK?

23                          Now, let's jump to what happened in this case in terms  
24 of the actual pay. And by the way -- well, let's just go  
25 through this real quick.

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Summation - Mr. Labuda.

With respect to Dr. Edelman, she's performing the same work as the other doctors. The administration work is negligible. There's no research work with respect to Dr. Porges; it got phased out. And they're treating patients all the same.

Then with respect to what was going on here, Mr. Rubin wasn't even aware about this Equal Pay Act. He didn't even know about it. There was no comparison studies between any doctors and there's no production element of the Equal Pay Act.

So let's go to the actual pay that happened.

Again, you have the contracts. You see what's in there. Dr. Modi indicates that they're all doing the same work. You heard every doctor say that. They're all rheumatologists. They all do the same thing, and that Dr. Modi felt that what Dr. Goldberg was paid was unfair, because he was getting paid substantially less.

We can just jump from there, Emanuel.

Thank you.

So let's look at the actual pay.

This is the pay of the doctors in 2014, when the practice started. Again, you heard they're all doing the same thing. Porges and Goldberg paid substantially more than Dr. Edelman. Same thing in 2015, 2016, 2017, 2018, 2019 -- I know there's a theme here -- 2020 and 2021. Always at the bottom, every year. OK?

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Summation - Mr. Labuda.

1                   So no doubt that that's just what happened. They  
2 can't dispute that. Those are the numbers. OK?

3                   So once we establish our claim, then it goes to the  
4 defendants in terms of the affirmative defense. OK? So it's  
5 their burden, not ours but their burden to show that there's a  
6 bona fide factor other than sex that was a reason why they paid  
7 that. And they talk about education, training or experience.  
8 OK?

9                   So let's just talk about that for a second.

10                  That's what the law is. It's got to be derived from a  
11 differential that's not based on sex. It got to be  
12 job-related, and there's got to be a business necessity. OK?  
13 That's what the law talks about.

14                  Now let's talk about what NYU is alleging here.

15                  They're talking about how, well, we paid doctors under  
16 all sorts of different circumstance, this factor, that factor,  
17 this factor, that factor, whatever. They didn't have any type  
18 of system. You heard testimony about Dr. Modi and you saw  
19 evidence. Dr. Modi and Dr. Edelman, same school, same  
20 experience, all that. He was making \$360,000, and she's making  
21 207 at the time. So if you talked about education, that can't  
22 be the case, because they went to the same schools and they  
23 both have the same education level.

24                  Training or experience, again, same thing with Dr.  
25 Modi. They all had the same training and experience. In fact,

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1 consider that question because I have determined that, for  
2 purposes of this case, the defendants, both individual and  
3 corporate, are employers covered by the Equal Pay Act and that  
4 plaintiff is an employee covered by the Equal Pay Act. You  
5 must assume during your deliberations that that precondition  
6 has been satisfied.

7 I will now instruct you on the definitions of "equal  
8 work," "similar working conditions," and "wages" as they apply  
9 to this claim.

10 In determining whether plaintiff's job required  
11 substantially equal skill, effort, and responsibility as those  
12 of the male employees, you must compare the jobs and not the  
13 individual employees holding those jobs. It is not necessary  
14 that the two jobs be identical. The Equal Pay Act requires  
15 only that the plaintiff show that the performance of the two  
16 jobs demands substantially equal skill, effort, and  
17 responsibility. Insignificant, insubstantial, or trivial  
18 differences do not matter and may be disregarded. On the other  
19 hand, work is not considered substantially equal if material  
20 differences in skill, effort, or responsibility exist.  
21 Further, job classifications, descriptions, or titles are not  
22 controlling. It is the actual work or performance requirement  
23 of the two jobs that is important.

24 In evaluating whether the performance requirements of  
25 the two jobs are substantially equal, you must consider the

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Charge

1 skill, effort, and responsibility required for those jobs. I  
2 will now tell you what is meant by the term "skills," "effort,"  
3 and "responsibility."

4 First, in deciding whether the jobs require  
5 substantially equal skill, you should consider such factors as  
6 the level of education, experience, training, and ability  
7 necessary to meet the performance requirements of their  
8 respective jobs. Jobs may require equal skill even if one job  
9 does not require workers to use these skills as often as  
10 another job. Remember, also, that you are to compare the jobs,  
11 not the employees. So the fact that a male employee has a  
12 qualification that plaintiff does not have is relevant only if  
13 the particular qualification is necessary for performing the  
14 job. Similarly, the fact that plaintiff has a qualification  
15 that male employees do not have is relevant only if the  
16 particular qualification is necessary for performing a job.  
17 Talents or skills that go beyond actual job requirements are  
18 not to be considered.

19 Second, in deciding whether the jobs require  
20 substantially equal effort, you should consider the mental or  
21 physical exertion in connection with the performance of the  
22 job. A deficiency on one side, for example, less physical  
23 exertion, may be compensated by a surplus on the other side,  
24 for example, more mental exertion. Duties that result in  
25 mental or physical fatigue or emotional stress, as well as

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1 factors that alleviate fatigue and stress, should be weighed  
2 together in assessing the relative effort involved.

3           Equal effort does not require people to use effort in  
4 exactly the same way. If there's no substantial difference in  
5 the amount or degree of effort to do the jobs, they require  
6 equal effort. However, if one job requires additional tasks  
7 that consumes significant amount of extra time and effort that  
8 the other job does not require, then the two jobs do not  
9 require substantially equal effort.

10          Third, in deciding whether the jobs involve  
11 substantially equal responsibility, you should consider the  
12 degree of accountability required in the performance of the job  
13 with emphasis on the importance of the job obligation.

14          In deciding whether the jobs involve substantially  
15 equal responsibility, you should consider the degree of  
16 accountability expected by the employer for the person filling  
17 the jobs, as well as the amount of preparation required to  
18 perform the job duties. You should also take into account such  
19 things as the level of authority delegated to plaintiff as  
20 compared to the male employees. Finally, you should consider  
21 the consequences to the employer for the effect of performance  
22 in the respective jobs.

23          You should note that "skill," "effort," and  
24 "responsibility" constitute separate tests, each of which must  
25 be met in order for the equal pay requirement to apply.

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With respect to the second element of plaintiff's claim, you must find the jobs are performed under similar working conditions. The conditions need only be similar, but need not be identical. In deciding whether the working conditions of the jobs are similar, you should consider the surroundings or the environment in which the work is performed to which the respective employees may be exposed. Overall, you need to consider the entire situation and give it your common sense appraisal to determine whether or not the working conditions are similar.

With respect to the third element of plaintiff's claim, plaintiff must prove she was paid a wage lower than male employees doing substantially equal work. For these purposes, you should understand that the term "wages" includes all forms of compensation, whether called wages, salary, expense reimbursement, profit sharing, repayment of loans or some other name. Fringe benefits are also included in the comparison of wages under the Equal Pay Act.

If you find that plaintiff has proved each of the elements that she must establish in support of her claim under the Equal Pay Act with regard to one or more of the comparators, you must then consider defendants' affirmative defense. These defenses include a bona fide factor other than sex, such as education, training, and experience.

Defendants have the burden of proof on their defenses,

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1 not the plaintiff. It must prove their defenses by a  
2 preponderance of the evidence. If defendants prove their  
3 affirmative defenses by a preponderance of the evidence and  
4 plaintiff is unable to show that this defense is pretext or  
5 excuse for gender discrimination, then plaintiff is not  
6 entitled to recover on her claim.

7 Defendants contend that the difference in pay between  
8 the two jobs was the result of a factor other than sex. To  
9 establish this defense, defendants must prove that plaintiff's  
10 sex played no part in the difference in wages. Defendants must  
11 also prove that a bona fide business-related reason exists for  
12 what the defendants contend is a gender neutral factor that  
13 resulted in any wage differential. Defendants also have the  
14 burden of showing that a business-related practice was in fact  
15 followed and that adherence to that practice served their  
16 stated legitimate business purpose.

17 Plaintiffs may also counter the defendants'  
18 affirmative defense by offering evidence shown that the reasons  
19 advanced by the defendants for any wage differential are  
20 pretext for gender discrimination. The appropriate inquiry to  
21 determine if the factor put forward is a pretext, is whether  
22 defendants used the factor reasonably in light of the  
23 employer's stated purpose as well as its other practices. In  
24 evaluating the defendants' affirmative defense, you may take  
25 account of any evidence that the defendants claim justification